31-434
(4) 434
31

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1431.

THE DISTRICT OF COLUMBIA, M. J. LAUGHLIN, AND WILLIAM H. THUMBERT, APPELLANTS,

vs.

JOHN H. BREWER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 31, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1431.

THE DISTRICT OF COLUMBIA, M. J. LAUGHLIN, AND WILLIAM H. THUMBERT, APPELLANTS,

vs.

JOHN H. BREWER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Subpœna	6	3
Marshal's return	6	3
Motion by District of Columbia for security for costs	7	3
Special assessment notice	8	4
Answer Wm. H. Thumbert	11	6
Order granting leave to deposit amount of taxes, &c.	20	10
Answer of District of Columbia	22	11
Replication to answers	26½	14
Order appointing examiner	28	15
Order certifying cause to General Term	29	15
Evidence taken before examiner	30	15
Notice to take testimony	30	15
Act to set curbstones, &c., approved July 24, 1869	31	16
Testimony of Wm. L. Bramhall	33	17
Wm. Oscar Roome	34	17
Wm. L. Bramhall (recalled)	35	18
Wm. Oscar Roome (recalled)	36	19
Wm. Oscar Roome (recalled)	37	19
Wm. Oscar Roome (for defense)	39	19
John F. Cook	40	21
Matthew J. Laughlin	49	26
Wm. H. Thumbert	53	28

JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 1, 1888.

	Original.	Print.
Exhibit J. F. C. No. 1—Certificate of Paving Stock, No. 1849	54	29
No. 2— " " No. 24	55	29
No. 3— " " No. 24	56	30
No. 4— " " No. 24	57	30
Examiner's certificate	58	30
Stipulation as to evidence	59	31
Advertisement for proposals	60	32
Contract	65	34
Exhibit Roome B—Letter of mayor to contractor, September 8, 1869	69	37
C—Assessment	70	37
Examination of title, &c	71	37
Stipulation as to sufficiency of deposit to meet decree	81	43
Hearing	82	43
Submission	83	44
Decree	83	44
Appeal and allowance of same	86	45
Citation (copy)	87	46
Certificate to record	88	47

1 In the Supreme Court of the District of Columbia. In Equity.

John H. Brewer
vs.
The District of Columbia, M. J. Laughlin, and William H. Thumlert.
} No. 9513.

To the honorable the supreme court of the District of Columbia, sitting in equity:

The complainant states as follows:

1. That he is a citizen of the State of New Jersey and brings this suit in his own right.

2. That defendant, The District of Columbia, is a corporation within said District, organized under the acts of Congress in that behalf, and that the others of said defendants are residents of said District.

3. That complainant is the owner of square number ninety-eight (98), in the city of Washington, in the District of Columbia, deriving title thereto from the District of Columbia as follows:

On the third day of January, 1876, the said District of Columbia sold at public auction said tract of land to satisfy the taxes before then assessed against said property and in arrears, and one Albert G. Hall became the purchaser thereof for the sum of $48.28, which was the highest bid therefor, and the said property not being redeemed from such sale the District of Columbia afterwards, to
2 wit, on the twenty-ninth day of March, 1878, executed and
delivered to said Hall a deed conveying to him in fee simple the said tract of land, as will, among other things, more fully appear by reference to said deed as recorded in Liber 888, folio 328, of the land records of said District, a copy of which is hereto attached, marked "A;" that said Albert G. Hall conveyed said premises to Roxana Lamson by deed dated April 9th, 1878, and recorded in said land records in Liber 888, folio 331; that said Roxana Lamson conveyed said premises to Christopher N. Thorn by deed dated November 25, 1879, and recorded in said land records in Liber 931, folio 98, and that said Thorn conveyed said premises to complainant by deed bearing date the 25th day of September, 1884, and recorded in said land records in Liber 1098, folio 263, and reference is hereby made to the records aforesaid for greater certainty.

4. That the deed so made by the District of Columbia to said Hall purported to and, as complainant is advised by counsel, did convey to said Hall all the right, title, and interest the said grantor then had in the land so conveyed, including all taxes before then assessed thereon, and no claim has been set up by said grantor until recently that such sale did not satisfy it for all taxes accrued prior to such sale; but so it is that on the 2d day of September, 1884, or thereabouts, the collector of taxes advertised said property for sale upon the pretended claim that said property was subject to the following assessments for taxes, to wit:

Special tax for paving and curbing, assessed June 2, 1870,
amounting to $790.23, with interest from that date to the
3 present time at the rate of ten per centum per annum, the
collection of which was sought to be enforced by sale thereof
as advertised, but that no sale was made therefor for the reason that there was no person offering to purchase said property and pay said demand, although it was offered for sale as advertised.

5. That said special tax, assessed as aforesaid on the 2d of June, 1870, was levied to satisfy a pretended claim of Stewart and Joyce, contractors, who claimed to have laid the sidewalk for said corporation of Washington on 21st street abutting said square, but that said demand by said contractors and said assessment was exorbitant, excessive, and erroneous, and exceeded the value of said property at that time, and that shortly thereafter the said sidewalk was wholly torn up and removed by and under the direction of the Board of Public Works of said District and a new pavement laid and subsequently charged and assessed against said square.

6. That the authorities of said city of Washington, on or about the 13th day of August, 1870, issued to M. J. Laughlin, assignee of Stewart and Joyce, the said contractors, scrip to the amount of said assessment, payable one-fourth in 30 days from date of assessment, one-fourth thereof in one year, one-fourth in two years, and one-fourth in three years from the date of such assessment, as evidence of indebtedness from said District, showing the nature of said indebtedness, and that, as complainant is informed and believes, said scrip was never redeemed by said District, but is now held by defendant, William H. Thumlert, but that more than ten years elapsed
before any demand was made for payment thereof, at least
4 so far as complainant knows or believes.

7. That the said collector of taxes threatens to make further attempts to sell said property for such special taxes at some future time, and that he and all other officials of said corporation claim that said taxes, interest, and costs, together with the general taxes for the year ending June 30th, 1873, amounting to $21.57; the general taxes for the year ending June 30th 1874, amounting to $46.56, and the general taxes for the year ending June 30th, 1875, amounting to $89.15, all of which became due and payable prior to the date of said sale for taxes, to wit, the third day of January, 1876, are an existing lien upon said property, and so retain the charges therefor upon the tax records of said corporation, whereby a cloud is raised upon complainant's title and prevents a ready sale thereof, and thereby its improvement by the erection of residences for which it is adapted.

Complainant charges that the District of Columbia, having conveyed all its interest in said real estate as aforesaid, is estopped from setting up any claim thereto existing prior to said conveyance.

Wherefore complainant prays—

1. That the defendants be summoned to appear and answer this bill and all things herein contained.

2. That upon the hearing the said real estate be declared free from

the lien claimed by virtue of said taxes so pretended to be assessed and levied thereon.

3. That said defendants be perpetually enjoined from collecting or attempting to collect the same from complainant or from 5 the said property so assessed, and for such other or further order or decree as may seem to the court meet and proper.

A. L. MERRIMAN,
Comp't's Sol'r.

W. WILLOUGHBY,
Sol. for Comp't.

(Indorsed:) Supreme court, D. C. Equity No. 9513. John H. Brewer *vs.* District of Columbia *et al.* Filed June 23, 1885. R. J. Meigs, clerk.

6 In the Supreme Court of the District of Columbia, June 23, 1885.

JOHN H. BREWER, Complainant,
against
THE DISTRICT OF COLUMBIA *et al.*, Defendants.
} No. 9513, Equity Docket 25.

The President of the United States to the District of Columbia, M. J. Laughlin, and William H. Thumbert, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.]
R. J. MEIGS, *Clerk, &c.,*
By M. C. CLANCY, *Ass't Clerk.*

MEMORANDUM.—That the defendants, herewith served, *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Indorsed:) No. 9513. Equity docket 25. S'p'a to ans. O. B. John H. Brewer *vs.* The Dist. of Columbia *et al.* Issued June 23, 1885. Returned June 30, 1885. Served the District of Columbia by service on James B. Edmonds, president of the Board of Commissioners of said District, June 25th, 1885; William H. Thumbert, June 24th, 1885; M. J. Laughlin not to be found June 30th, 1885. Clayton McMichael, marshal. W. Willoughby.

7 In the Supreme Court of the District of Columbia. In Eq.

JOHN H. BREWER
vs.
THE DISTRICT OF COLLUMBIA *et al.*
} No. 9513.

And now comes the defendant, The District of Columbia, by A. G. Riddle, its attorney, who specially appears herein for the purposes of this motion, and moves the court for a rule upon the complainant to require him to give security for all costs that this defendant may be put to by reason of the dismissal of complainant's bill or failure to carry his suit to a successful termination for the reason that the complainant is a non-resident of the District of Columbia, to wit, a resident of the State of New Jersey, as appears from his bill of complaint herein.

A. G. RIDDLE,
Att'y for Def't, Specially Appearing.
F.

(Indorsed:) In eq. No. 9518. Brewer *v.* Dist. of Col. *et al.*, def'ts. The Dist. of Col. Motion for security for costs. Filed June 26, 1885. R. J. Meigs, clerk.

8 *Revised.*

Book 1, folio 216.

Office of the Commissioners District of Columbia, special assessment division, room No. 16, second floor, Columbia building, Four-and-a-Half street.

WASHINGTON, D. C., *Sept.* 25, 1885.

Wm. S. Morse:

Lot No. —, part square No. 98, fronting 164.5 feet on 21 St. (E. Q), is charged upon the books of this office for special improvements as follows:

	Dollars.	Cents.	
Grading	193	08	
Curbing	93	04	
Footway	80	13	
Carriage-way	388	63	
Parking			
Main sewer			
Sewer service			
Water service	125	48	
Trees	10	89	
	891	25	
By drawback	(147	20	
	(114	10	E. M.
	(164	68	om.
	465	27	
Interest at 10 per cent. per annum from Nov. 28, 1876	377	65	
	842	92	

Lien certificate No.—, issued January 10, 1885.

Received payment, of Wm. Dickson, in drawbacks.

JOHN F. COOK,
Collector of Taxes.

J. W. C.

(Extract from "An act prescribing the mode of assessments for special improvements, and providing for the collection thereof, approved August 10, 1871.")

9 "SEC. 3. And be it further enacted, That if any person or persons notified as aforesaid shall neglect or refuse to pay the amount assessed against his or their property as aforesaid after the expiration of thirty days the said Board of Public Works shall, immediately thereafter, issue certificates of indebtedness against the property as aforesaid, which certificates shall bear interest until paid at the rate of ten per centum per annum, and until paid the assessment and certificate shall remain and be a lien upon the property on or against which they shall have been issued; and if the said assessment shall not be paid within one year the said board shall, upon the application of the holder of the certificate of indebtedness, proceed to sell the property against which the assessment and the certificates exist, or so much thereof as may be necessary to pay said assessment; such sale to be first duly advertised daily for three successive weeks in the regular issue of some newspaper published in the District of Columbia, and to be made by said board at public auction to the highest bidder, and a deed shall be given by the Governor, countersigned by the secretary of the District of Columbia, which deed shall be deemed and held to be a good and perfect title to any property bought at any sale hereby authorized: Provided, That the owner of such real estate shall have the right to redeem the property so sold by paying the amount of the purchase-money and twenty per centum thereon within two years from the date of sale."

(Sec. 3 of an act approved May 29, 1873, entitled "An act for extending the time of payments of special assessments and for other purposes.")

10 "That the time shall be extended so that the amount of each certificate shall be payable in five equal annual installments from the date of said certificate, with interest at the rate of ten per centum per annum until paid; and in case of default in the payment of any installment the property against which the assessment and certificate exist, or — much thereof as may be necessary to pay said installment, with interest, costs, and charges, shall be sold and — subject to redemption as provided in act of August 10, 1871; but at any time after making the assessment and before sale the owner of the property may pay the whole or any installment thereof, with interest, cost, and charges."

(The provisions of these laws will be carried out if not complied with.)

WM. OSCAR ROOME.

N. B.—If this property no longer belongs to you, please direct this circular to the present owner or return it to this office, with the name of the present owner.

11 In the Supreme Court of the District of Columbia, this — day of October, 1885. In Equity.

JOHN BREWER
vs.
THE DISTRICT OF COLUMBIA and Others. } No. 9513, Doc. 25.

The answer of William H. Thumlert, one of the defendants named in this bill of complaint herein filed.

The defendant, now and at all times hereafter, saving to himself all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as he is advised it is material or necessary for him to make answer to, says as follows:

1. This defendant has no knowledge of the complainant and therefore can neither admit nor deny that he is a citizen of the State of New Jersey; but he admits that the District of Columbia is a corporation within said District, organized under the acts of Congress in that behalf, succeeding to the rights, powers, duties, and obligations of the corporation of the city of Washington, and he alleges that said corporation of the District of Columbia has other and more extensive powers, duties, and jurisdiction than had the said corporation of the city of Washington. He admits that he is a resident of said District, if by the language "and the defendant is a resident of said District of Columbia" is meant this defendant.

12 2. This defendant has no knowledge or information concerning the allegation that complainant is the owner of square 98, in the city of Washington, but if thereby is meant that the undisputed legal and equitable title to the whole of said square is in said complainant, on information and belief this defendant denies said allegation, and on like information and belief he alleges that both the legal title and as well title by possession to at least a portion thereof is in one Allen C. Vlark, and this defendant demands of said complainant strict proof of said allegation of ownership. He has no knowledge or information concerning the alleged conveyance from the widow and heirs of one Morse, now deceased, and the information in said bill concerning the same is too general and indefinite to enable him to verify the same; he therefore neither admits nor denies its existence or validity, but leaves the complainant to his proofs. On information and belief, he denies that for some time prior to the year 1870 and until his death, subsequently, the said Morse had title to said square, or that his said widow and heirs as such had title thereto from that time until the sale for taxes by the District of Columbia in said bill referred to; and, on the contrary, this defendant alleges that said square had been open common, unimproved and unenclosed, since a time whereof the memory of man runneth not to the contrary.

3. This defendant admits the sale of said square for taxes, as is alleged in the third paragraph of said bill, but whether said sale was

after due and proper advertisement and in strict conformity
13 to law, or whether or not one Albert S. Hale became the purchasers thereof, and as to all the other allegations in this paragraph concerning the said sale for taxes on the 3d of January, 1876, and the subsequent conveyances in said paragraph mentioned, this defendant has no personal knowledge, information, or belief, except such as he has derived from an examination of the records referred to in said paragraph, and as said information is imperfect, incomplete, and unsatisfactory, this defendant can neither admit nor deny any of said allegations, but demands strict proof of the same. As to the remaining allegation of said paragraph, that said deed from the District of Columbia to said A. G. Hale, as appears by the terms thereof, "conveyed to said Hale all the right and title thereto the said grantors then had in the said land, including all taxes before that time assessed thereon, and free from all charges and assessments then existing against said property in favor of said grantor," this defendant is advised and believes that said allegation is a conclusion of law and not an allegation of fact, and that as such he is not called upon to admit or deny the same, but in so far as the same may be held to be an allegation of fact this defendant, on information and belief, denies the same.

4. This defendant admits that in September, 1884, the collector of taxes, by direction of the authorities of the District of Columbia, advertised the said property for sale upon the claim that said property was subject to an assessment for special tax for paving and curbing, assessed about June 2, 1870, and amounting to $790.23, with interest from that date to the present time (if thereby
14 is meant the time of payment) at the rate of ten per centum per annum, but he denies that said claim was a "pretended claim," or that said assessment only "purported" to have been made about June 2, 1870, and he denies all and singular the innuendoes and insinuations in said paragraph contained whereby it is sought to throw doubt upon the validity, correctness, and *bona fides* of said assessment. On information and belief, this defendant admits that said property was offered for sale by said collector as advertised, but as to whether a sale was or was not made and, if not, the reason therefor alleged in said paragraph, this defendant has no knowledge, information, or belief, and therefor neither admits nor denies the same, but leaves the complainant to his proofs.

5. This defendant admits that the special tax assessed as aforesaid was for the laying of a sidewalk and curbing under contract with corporation of Washington, on 21st street, abutting said square, by Messrs. Stewart and Joyce, contractors, but he denies that said special tax was assessed for the purpose of satisfying a pretended claim of said Stewart and Joyce. He admits that the authorities of said corporation, on or about 14th Oct., 1870 (instead of Aug. 31, as alleged), issued to M. J. Laughlin, assignee of said Stewart and Joyce, script (or more properly city of Washington paving stock) to the amount of said assessment, payable one-fourth in 30 days from date of assessment, one-fourth in one year, one-fourth in two years, and one-fourth in three years from date of said assessment. He ad-

mits that said script or stock as evidences of indebtedness, and that
they show the nature of said indebtedness. He admits that
15 said script or stock were not redeemed by said District, but
that they are still outstanding and are held by this defendant
as the assignee for value of said Laughlin. He denies that no claim was made upon said script or stock for more than ten years prior to said sales in September, 1874, and, on the contrary, he alleges that frequent demands for its payment have been made upon the proper authorities, which has invariably been met by the information that said assessment had not been paid.

6. This defendant denies that said assessment was unlawful and void, either for the reasons alleged in said paragraph six or for any other reason, and he further denies the correctness of all and singular the allegations in said paragraph six purporting to be the reasons why said assessment was unlawful and void. He admits that said sidewalk was removed and a new one was substituted by and under the direction of the Board of Public Works of said District, a part of the cost of which was subsequently assessed and charged against said square; but he denies that this was in consequence of the worthlessness of said original sidewalk, and, on the contrary, on information and belief, he alleges that said sidewalk was removed and a new one substituted by reason of a change of grade made in said street by said Board of Public Works; and this defendant again denies the insinuations in said sixth paragraph that said assessment was only an "alleged" assessment.

And this defendant, further answering, says, on information and belief, that the complainant, by his attorney, Wm. Dickson, has
paid to the said District of Columbia the assessment levied against
said square for the improvement of said 21st St., made by
16 and under the direction of the Board of Public Works above
referred to, and that in making said payment, on or about
January 10, 1885, he claimed and received credit on the bill therefor the sum of $164.68, as and for old material belonging to and part of the said sidewalk and curbing represented by the assessment of June 2, 1870, which he now seeks to invalidate and annul, as will more fully appear by a duplicate copy of said bill as paid by said Dickson and the credits thereon hereto annexed as part of this answer.

7. This defendant has no knowledge, information, or belief concerning the allegation in the seventh paragraph of said bill that the said collector threatens to make further attempts to sell the said property for said special taxes at some future time, and therefore can neither admit nor deny the same, but leaves the complainant to his proofs. He admits that for himself he claims that the special taxes, with interest and costs, are now an existing lien upon said property, and on information and belief he admits that the proper officers of the District of Columbia claim the same thing, and he admits, on like information and belief, that if the special taxes enumerated in said paragraph have not been paid and satisfied, the proper officers of said District do claim that they also constitute and are a like existing lien upon said property, but as to these general

taxes, this defendant having no knowledge, information, or belief, he makes no claim of or concerning them or their status. He admits that said officers of said District retain the charges for said special and general taxes upon the tax records of the District
17 of Columbia, but he denies that this raises a cloud upon the title of complainant any more than any other just or legal tax that remains unpaid would raise a cloud; and he denies that the existence of said unpaid taxes upon the record prevents a ready sale of said property, or thereby its improvement by the erection of residences thereon, for which he admits it is adapted. The remaining portion of the seventh paragraph, not herein fully answered, this defendant is advised is a proposition of law, and therefore he is not called upon to answer the same, but in so far as the same may be held to be an allegation of fact, this defendant denies the same.

And this defendant submits that the plaintiff has not by his said bill shown any case in equity or case entitling him to proceed against this defendant in this honorable court, and he prays all such benefit and advantage as if he had demurred to said bill, and to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W. H. THUMLERT.

JAMES H. SAVILLE,
Solicitor for Defendant, Wm. H. Thumbert.

DISTRICT OF COLUMBIA, *To wit:*

William H. Thumlert, being duly sworn, on oath says he has read the foregoing answer by him subscribed and knows the contents thereof; that the statements therein of his own knowledge are true, and those made on information and belief he believes to be true.

WM. H. THUMBERT.

Subscribed and sworn to before me this 15 day of October, 1885.
[SEAL.] APPLETON P. CLARK,
Notary Public.

18 (Indorsed:) 9513, equity, doc. 25. Brewer *vs.* Dist. of Col. *et al.* Answer of W. H. Thumbert to amended bill of complaint. The clerk will please file. J. H. Saville, solicitor for deft't Thumbert. Filed Oct. 16, 1885. R. J. Meigs, clerk.

19 In the Supreme Court of the District of Columbia. Special Term.

OCTOBER 6TH, 1885.

The special term in equity for October, 1885, commences its session this sixth day of October, 1885, pursuant to assignment, Mr. Associate Justice Hagner presiding.

* * * * * * * * *

Adjourned until to-morrow at 10 a. m.

(*Minutes of the Special Term* 22, *p.* 431.)

In the Supreme Court of the District of Columbia.

TUESDAY, *October* 27, 1875.

The court met pursuant to adjournment.

* * * * * * *

20 In the Supreme Court of the District of Columbia, this 27th day of October, A. D. 1885. In Equity.

JOHN H. BREWER *et al.*
v.
DIST. OF COL. *et al.*
} No. 9513, Doc. 25.

This cause coming on to be heard on the motion of complainant, this day filed, herein for leave of the court to deposit in the registry of the court the amount of the assessment for special taxes by the corporation of Washington, assessed on or about June 2d, 1870, and amounting to $790.23, with interest at the rate of ten per centum per annum from said June 2d, 1870, until paid; and also the amount of the assessments for general taxes assessed by the District of Columbia for the years 1873, 1874, and 1875, as described in the bill against the property in controversy in this suit, with interest at the rate of ten per cent. per annum from the time said taxes are claimed to have been payable until paid, and thereupon to release the said land from the lien of said taxes so that the same may be sold released from said lien, it is this 27th day of October, A. D. 1885, ordered—

That when the said complainant shall have deposited in the registry of this court the principal sum of $790.23 and the interest thereon, at the rate of ten per centum per annum, from June 2d, 1870, to June 2d, 1886, to be held subject to the final decision of the court herein, and also the amount of the assessments for general taxes assessed by the District of Columbia for the years 1873, 1874, and 1875, as described in the bill of complaint, against the 21 property in controversy in this suit, with costs and penalties and interest at the rate of ten per centum per annum from the time said taxes are claimed to have been payable until the said 2d day of June, 1886, to be held subject to the final decision of the court herein, then the said property shall stand relieved from the lien of said special tax and interest, and also from the lien of said general taxes and interest, and the money so deposited shall be held in lieu thereof and subject to its disposition on final decree, the complainant consenting to a formal decree as against him and his sureties on appeal should said fund prove insufficient to pay the amounts found to be due upon said certificates of assessment and to pay the amounts of said general taxes so assessed, as described, if any such amounts be found to be due upon final decree.

A. B. HAGNER.

We consent to the above decree.

J. H. SAVILLE,
Solicitor for Def't Thumlert.
W. WILLOUGHBY,
Solicitor for Comp't.
HENRY E. DAVIS,
Att'y for Dist. Col.

Oct. 27, 1885, in obedience to above decree, $2,400 deposited in court.

Test: R. J. MEIGS, *Clerk,*
[SEAL.] By R. J. MEIGS, JR., *Ass't C.*

(Indorsed:) Eq. 9513. John H. Brewer *v.* Dist. Col. *et al.* Order granting leave to deposit amount of taxes, &c. M. 22, p. 479. 5 S. D. Filed Oct. 27, 1885. R. J. Meigs, clerk.

22 In the Supreme Court of the District of Columbia. In Equity.

JOHN H. BREWER
vs.
THE DISTRICT OF COLUMBIA and WILLIAM H. THUMBERT.
No. 9513.

The separate answer of the District of Columbia to the bill of complaint herein filed.

This defendant, in answer to said bill of complaint or so much thereof as it is advised it is material and necessary for it to answer, says—

First. For the purposes of this suit it admits the allegations of the first paragraph of said bill.

Second. This defendant is not informed as to the allegations of the second paragraph of said bill, and therefore neither admits nor denies the same, but, if the same be deemed material to the issues herein, demands strict proof thereof.

Third. Answering the allegations of the third paragraph of said bill, this defendant says that it has no knowledge or information of the different conveyances referred to in said paragraph, except the deed referred to from the District of Columbia to said Albert G. Hall, and therefore neither admits nor denies the same, but, if the same be deemed material, demands strict proof thereof.

Further answering, this defendant says that it denies that said deed referred to in said paragraph from the District of Columbia to said Hall conveyed to said Hall "all the right and title thereto the said grantor (meaning this defendant) then had in the 23 said land, including all taxes before that time assessed thereon, and free from all charges and assessments then existing against said property in favor of said grantor" (meaning this defendant); but, on the contrary, avers that it is apparent from the face of said deed and the averment therein contained that it was given solely and exclusively for the purpose of conveying to said Hall the right, title, and interest of said District in said property, if any it had, by reason of the failure of the owner or person in whose name said property was assessed to pay the taxes due this defendant for the fiscal year ending June 30, 1872, and not for any other tax or assessment whatever due it by the owner of said property or the person in whose name the same was assessed, and especially the special assessments and taxes referred to in said bill.

Further answering said paragraph, this defendant says that by deed dated August 9, 1884, Laura E. Morse *et al.* duly conveyed to one Thomas G. McElvane, as appears by reference to Liber 1095 of the land records of the District of Columbia, square 98, the consideration being two thousand dollars and taxes, and the said McElvane, by deed dated August 13, 1884, and duly recorded on the 18th day of September, 1884, in Liber 1098, folio 116, of the land records of the District, duly conveyed in fee simple to the complainant said square 98, subject, however, to all taxes, tax sales, &c.; and this defendant avers that the complainant by the terms of said deed was informed and put on his guard that certain taxes were due on said property to this defendant, and took the same subject to whatever taxes might be due thereon; and afterwards, as this defendant is informed and believes, the said complainant, becoming fully aware of the existence of the taxes complained of, and being further advised that a tax deed had been issued to said Hall, as in
24 said paragraph set out, went to work to procure and did obtain a conveyance from the party holding said tax deed of his interest thereunder, with the purpose and intent, if possible, to prevent this defendant from collecting all taxes due it prior to the conveyance to said Hall, including all taxes and assessments complained of in this bill; and this defendant suggests to this honorable court whether the complainant should be permitted in the light of the facts to prevent it from forcing its claim against the property described in said bill for said taxes and assessments.

This complainant, further answering, says that even if said conveyance should operate as a bar—which this defendant denies—to the taxes due it prior to said conveyance to Hall it could not in any sense apply to the special assessment taxes complained of and thus defeat the right of this defendant's codefendant to the remedy which the law gives him against said property to recover the amount due him.

Fourth. This defendant admits that said property was advertised for sale at the time specified in said fourth paragraph to satisfy the special assessments legally due thereon, amounting to seven hundred and ninety dollars and twenty-three cents, with the interest allowed by law, and that the same was not sold at the sale held pursuant to the advertisement because of the failure of a proper bid therefor.

Fifth. Answering the allegations of the fifth paragraph of said bill, this defendant says that, pursuant to law, the sidewalk and curbing mentioned therein were duly laid on the street abutting the

property complained of in said bill; that the said property was duly
assessed and a certificate of assessment or scrip duly issued
25 to the contractor doing the work against the property bene-
fited in payment of the work done by him, and that the defendant Thumbert is the holder of said certificate of scrip as the assignee of M. J. Laughlin, who was in turn the assignee of the contractor.

Further answering said paragraph, this defendant adopts, so far as the same is not inconsistent herewith, the answer of its codefendant.

Sixth. This defendant, in answer to the allegations of the sixth paragraph of said bill, denies that the special assessment complained of was unlawful and void, and further denies that said special assessment was unlawful and void for the reasons set forth in said paragraph or any of them or any other reason whatsoever, but, on the contrary, avers that the law was in all respects complied with by the authorities of the District of Columbia and the late corporation of Washington.

This defendant, further answering said paragraph, denies that said pavement was worthless or improperly laid, but, on the contrary, avers the contrary to be true. It admits that the Board of Public Works, in exercise of the discretion reposed in it by law, took up said pavement referred to in said paragraph and substituted another one for the same, but denies that it was for the reason set forth in said paragraph.

And, for further answer to said paragraph, this defendant adopts so much of the answer of its codefendant as says, "on information and belief, that the complainant, by his attorney, William Dickson, has paid the said District of Columbia the assessment levied against said square for the improvement of said Twenty-first street made by
and under the direction of said Board of Public Works
26 above referred to, and that in making said payment on or
about January 10, 1885, he claimed and received credit on the bill there for the sum of $164.68 as and for old material belonging to and part of the said sidewalk and curbing represented by the assessment of June 2, 1870, which he now seeks to invalidate and annul, as will more fully appear by a duplicate copy of said bill as paid by said Dickson and the credits thereon hereto annexed as part of said answer.

Seventh. Answering the allegations of the seventh paragraph to said bill, this defendant says that under the law it is the duty of the collector of taxes for the District of Columbia to advertise and sell all property in payment of taxes, both general and special, when due, and the defendant says that, the taxes and special assessment complained of being now legally due and payable, the defendant intends to enforce the collection of the same by sale of the property mentioned unless restrained by this honorable court.

This defendant denies so much of said paragraph as alleges that this defendant's conveyance to Hall, referred to in said paragraph, estops the District from the collection of taxes referred to.

Further answering, this defendant says that as to the matters and things not herein specially admitted or denied it denies the same and prays the same benefit of this its answer as if it had specially demurred to said bill for want of equity.

Now, having fully answered, this defendant prays to be hence dismissed with its reasonable costs in this behalf sustained.

THE DISTRICT OF COLUMBIA,
By HENRY E. DAVIS, *Its Attorney.*

(Indorsed:) In eq. No. 9513. Brewer *v.* The District of Columbia *et al.* Answer of the District of Columbia. Please file. A. G. Riddle, att'y for D. C. Filed Nov. 19, 1885. R. J. Meigs, clerk.

26½ *Replication.*

In the Supreme Court of the District of Columbia. In Equity.

JOHN H. BREWER
vs.
THE DISTRICT OF COLUMBIA *et als.* } No. 9513.

The complainant joins issue with the defendants, The District of Columbia and William H. Thumlert, on their answers filed.

W. WILLOUGHBY AND
A. L. MERRIMAN,
Solicitors for Complainant.

(Indorsed:) No. 9513. In equity. William H. Brewer *vs.* The District of Columbia *et al.* Replication. Filed May 24, 1886. R. J. Meigs, clerk.

27 In the Supreme Court of the District of Columbia. December Term, 1885.

DECEMBER 1ST.

The special term in equity for December, 1885, commences its session this first day of December, 1885, pursuant to assignment, Associate Justice Hagner presiding.

* * * * * * *

Adjourned until to-morrow at 10 a. m.

(*Minutes of the Special Term, p.* 2, 3, 63.)

In the Supreme Court of the District of Columbia.

FRIDAY, *December* 18, 1885.

The court met pursuant to adjournment.

* * * * * * *

28 Supreme Court of the District of Columbia.

JOHN H. BREWER
v.
DIST. OF COL. *et al.* } Equity No. 9513.

Ordered, this 17th day of December, A. D. 1885, that Charles S. Bundy be appointed examiner to take the depositions in this case.

A. B. HAGNER.

(Indorsed:) Equity No. 9513. John H. Brewer *et al. vs.* Dist. of Col. *et al.* Order app't'g examiner to take depositions. M. 23, p. 115, 10. Filed Dec. 18, 1885. R. J. Meigs, clerk.

29 In the Supreme Court of the District of Columbia, April 6, 1886. April 18, 1886, Term. In Equity.

The special term in equity for April, 1886, commences its session the sixth day of April, 1886, pursuant to assignment, Mr. Justice Hagner presiding in the absence of Mr. Justice Cox, occasioned by illness. * * *

Adjourned until to-morrow at ten a. m.

In the Supreme Court of the District of Columbia, Monday, April 26, 1886.

The court met pursuant to adjournment.

JOHN H. BREWER
vs.
THE DISTRICT OF COLUMBIA *et als.* } 9513, Equity Docket 25.

It is, this twenty-sixth day of April, 1886, at the request of the parties to the cause of John H. Brewer against The District of Columbia, ordered that said cause be, and is hereby, certified to the general term, to be therein heard at the first instance.

CHARLES P. JAMES, *J.*

Minutes of the Special Term 23, *p.* 407.

* * * * * * *

Adjourned till to-morrow at ten a. m.

30 Supreme Court of the District of Columbia, the — day of ——, 188–.

J. H BREWER
vs.
DISTRICT OF COLUMBIA *et al.* } No. 9513, Docket —.

The President of the United States to William Oscar Roome, William Tindall:

You are hereby commanded to appear as witness- for the —, before C. S. Bundy, on the 28th day of December, 1885, at 10 o'clock

a. m., and bring with you all records & papers relating to the assessment for sidewalk, &c., on square 98 fronting on 21st street in 1870, including petition, assessment notice to owners, & filing same.

Witness D. K. Cartter, chief justice, &c.

[SEAL.] R. J. MEIGS,
Clerk, &c.
By L. P. WILLIAMS,
Ass't Clerk, &c.

31 CHAP. 7.

An act to set the curbstones and pave the footways on the east and west sides of Twenty-first street west between Pennsylvania avenue and O street north.

Be it enacted by the board of aldermen and board of common council of the city of Washington, That the mayor be, and he is hereby, authorized and requested to cause the curbstone to be set and the footways and gutters paved on the east and west sides of Twenty-first street west between Pennsylvania avenue and O street north, the work to be contracted for and executed in the manner and under the superintendence provided by law; and to defray the expense of said improvement a special tax, equal to the cost thereof, is hereby imposed and levied on all lots or parts of lots bordering on the line of the improvement, the said tax to be assessed and collected in conformity with the provisions of the act approved October 12, 1865: Provided however, That the cost of resetting the curb and relaying the gutter and pavement on the east side of Twenty-first street between Pennsylvania avenue and K street shall be paid out of the ward fund.

Approved July 24, 1869.

32 In the Supreme Court, D. C.

J. H. BREWER
v.
THE DISTRICT OF COLUMBIA, WILLIAM H. THUMBERT.
} Equity No. 9513.

DEC. 28, 1885.

Parties met pursuant to notice, Willoughby and Merryman appearing for plaintiff and J. H. Saville, Esq., appearing for defendant Thumbert.

Witnesses Wm. O. Room and William Tindall, who have been subpœnaed, not appearing, it is stipulated by the parties that plaintiff may file herein certified copies of the following conveyances, to wit: Conveyance from the heirs of Morse to one McElvane and from McElvane to plaintiff, and conveyance to one Albert G. Hall and from said Hall to Roxanna Lamson and from Roxanna Lamson to Christopher N. Thorn and from said Thorn to plaintiff, or read the the same from the record at the hearing as he may elect.

It is also stipulated and agreed that copies of the script or city of Washington paving stock, referred to in the 5th paragraph of the amended bill, may be filed and read at the hearing in place of the original.

The further hearing adjourned to Wednesday, Dec. 30, at 2 o'clock p. m.

33 DEC. 30TH, 1885—at 2 p. m.

WILLIAM L. BRAMHALL, a witness called and sworn on behalf of the plaintiff, testified as follows:

My name is William L. Bramhall; my age is 46 years; residence, Washington city, D. C.; my occupation is attorney for defective titles.

By A. L. MERRIMAN:

Question 1. Were you acquainted with Wm. S. Morse during his lifetime?

A. I was.

Q. When did he die?

A. In the month of August, 1872, I think.

Q. Did he leave a family; and, if so, whom?

A. He left a widow, Laura E. Morse, and two children, Wm. A. and Nina D. Morse. He left no other children or descendants of children that I know of. I should be likely to know if he did from common reports and from members of his family and other persons likely to know.

Q. Are you acquainted with sq. 98 in the city of Washington?

A. I am.

Q. Do you know what frontage that sq. has on 21st street; and, if you know, what is it?

A. About 165 feet, more or less.

And further deponent saith not.

WILLIAM L. BRAMHALL.

34 WILLIAM OSCAR ROOME, a witness called and sworn on behalf of the plaintiff, testified as follows:

My name is William Oscar Room; my age is 46½ years; occupation, chief of special assessment division of the District of Columbia; residence is Washington, D. C.

By Mr. MERRIMAN:

Q. Have you the records relative to the assessment of sq. 98 for paving sidewalks, &c., on 21st street in the year 1870?

A. Yes; all that are within my jurisdiction.

Q. Have you them here? And, if so, produce them to the commissioner.

A. I have. They are contained in chap. 7 of the Laws of the City of Washington, passed by the 67th council, An act, &c.; copy hereto annexed, marked "Exhibit Roone A." The next is the order of the mayor to the contractors to do the work under that act and the return of service of said order; Stewart & Joyce, contractors; signed by Henry Kimber, and marked "Exhibit Roome B." Then I have the assessment itself for the work; copy hereunto annexed, marked "Exhibit Roome C." That is all I have been able to find in the records of my office or among papers on file.

Q. Have you looked among the papers of your office to see whether any notice of the assessment was given to the owner of the property fronting on that street in said square or whether any notice was filed with the register of such assessment?

A. No; because I am informed that no law existing at that time required such notice.

35 Q. Do you know whether or not any such notice was given or filed?

A. There is no notice to any property-owner on file prior to the assessment of property made by the Board of Public Works, so far as my knowledge goes.

Cross-examination by Mr. Saville:

Q. The notice referred to in the last answer was in obedience to an act of the Legislative Assembly, was it not?

A. Yes.

Q. Have you any knowledge of any act of the council requiring notice to be given?

A. No; I have not; no such are filed in my office.

Q. Are not the records of your office confined to assessments made subsequent to the act of Congress known as the "original act," which created the Board of Public Works, and to such assessments made prior thereto as were taken up for some special reason by direction of the board?

A. Yes.

William L. Bramhall called for cross-examination by Mr. Saville:

Q. How long previous to his death did you know Wm. S. Morse?

A. From the spring or summer of 1865 until his death. I have seen Laura E. Morse, wife of Wm. S. Morse, but was not personally acquainted with her. I do know as well as any one situated as I was and knowing Mr. Morse as well as I did that Wm. A. and Nina D. Morse were the children and only children of W. S. Morse and Laura E. Morse, his wife. I do not know whether William S. 36 Morse was ever married before his marriage to his last wife, Mrs. Laura E. Morse, except from common report, but such common report was that he was never married before.

WILLIAM L. BRAMHALL.

At this point it was agreed by counsel that the records of the recorder of deeds and the register of wills referred to in the abstract of title filed herewith may be read on the hearing of this case and made part of the record hereof, which abstract is marked "Exhibit A. W. L., B."

Q. May not the old records of the corporation of Washington show some form of notice to have been given to owners for the assessment? I mean records not forming part of the archives of your office.

A. They might.

Q. Have you any knowledge of any notice ever having been given prior to the organic act?

A. No; I have not.

WM. OSCAR ROOME.

At this point the counsel for plaintiff gives notice to the District of Columbia to produce any record or papers referring to the assessment in controversy, and especially any notice of the assessment given to the owner or filed with the register, if any there were.

Adjourned to Saturday, Jan'y 2, '86, at 2 p. m.

Parties appeared, Willoughby and Merriman for plaintiff and Saville for def'ts; and witness Morgan subpœnaed by plaintiff, and, he wishing a postponement, the further hearing is postponed to Tuesday, the 5th Jan'y, at 1.30 p. m.

37 TUESDAY, *January 5th.*

Present: Willoughby and Merriman, and Saville, for def'ts.

WM. OSCAR ROOME recalled by plaintiff:

Q. Since your examination the other day have you made further search of the records for the assessments of sq. 98; and, if so, with what success?

A. I found in the office of the ass't assessor the original book of entry of this assessment, Book 7, folio 66, and across the face of the assessment appears the following legend: "Notified June 2, 1870."

Q. That entry, does it relate to this sqr. only, or to others as well?

A. It relates to the entire assessment, which included several squares recorded on that page.

Q. Have you found any notice returned to the office of this assessment?

A. No, sir.

Plaintiff's attorneys here give notice that they except to the competency and relevancy of the proof of the assessment and notice, and they reiterate their call upon the District for proofs of the regularity of this assessment in question, if any they have.

Cross-examination by Mr. SAVILLE:

Q. On your direct examination you were asked if you found any notice returned to your office of the assessment and you have answered, "No." Will you please state if it is or was customary to return notices of the assessments to the office?

A. I was not in the office in 1870 and don't know the first thing about such details.

38 Q. What is the object of a notice, or do you know *what* the contents of those notices?

A. I never saw one of them nor the form that was then in use, knowing it to be such.

Q. Have you any personal knowledge in relation to the assessment involved in this suit?

A. No; I know nothing about it, except what I find on the records.

Q. Are you the legal custodian of those records?

A. Of some, yes; of others, no.

Q. How about those referred to in your testimony of to-day?

A. My testimony stated that I found those assessments in the office of the assistant assessor and they are a part of his records.

WM. OSCAR ROOME.

It is here admitted that Mr. Morgan, the assistant assessor, has been subpœnaed to appear and produce such records as may appear in his office relating to the assessment in question; admitted that this square in question was vacant at the date of this assessment and was up to 1885.

C. S. BUNDY, *Examiner*.

Adjourned to Thursday, January 7, at 2 p. m.

39 *Testimony on Behalf of Defendants.*

In the Supreme Court of the District of Columbia.

J. H. BREWER
vs.
THE DISTRICT OF COLUMBIA and WILLIAM H. THUMBERT.
} Equity No. 9513.

WILLIAM O. ROOME, being first duly sworn, testified as follows:

By Mr. FORREST:

Q. Look at the bill now shown you, which is attached to this exhibit to the answer of the defendant Thumbert, and state whether or not this bill was made out in your office.

Answer. Yes, sir.

Q. Look on that bill, at the figures $164.68, after which are the letters O. M., and state what that refers to.

A. The $164.68 is a credit allowed upon this bill for the value of the old material previously assessed upon that street—a prior assessment, an assessment under the assessment of May 26, 1870, the original assessment.

Q. I understand that the old material was bricks, etc., taken from the old sidewalk and included in the assessment of May 26, 1870.

A. They took all the old material there and reused it. That was the value of the old material which was reused and included in the assessment.

Q. And to that extent this assessment was given the benefit
40 of that credit—to the extent of the value of the old material?

A. That is the amount credited on this assessment. Of course it was for the old material.

It is stipulated and agreed by and between counsel that the bill for the revised special assessment, attached to the defendants' answer and referred to in Mr. Roome's testimony, was paid Jan'y 10, 1885, by William Dickson on behalf of John H. Brewer, the complainant.

John F. Cook sworn, and testified as follows:

By Mr. Forrest:

Q. Look at this record and state what it is (exhibiting same to witness).

A. This is a special tax record of property, containing the original entry of assessment or assessments done by the late corporation of Washington of sewers, paving alleys, footways, etc.

Q. State the number of page there before you and for what kind of assessment it is.

A. Foot laying.

Q. Do you find anything opposite the assessment of square 98? If so, state what entries there appear.

A. I find to whom it is assessed, the ward in which it is, all of the square, and the amount of $790.28.

Q. To whom is the property assessed?

A. George Bender. Pencil memoranda "notified June 2, 1870," same date on which the assessment was entered.

Q. Is George Bender assessed for the whole of that square or part of it?

41 A. For all the square.

Q. Read the entries opposite George Bender's name as they appear there. Read across face of the record.

A. "George Bender, square 98, all $790.28."

Q. What is the date of that?

A. June 2, 1870.

Q. You spoke of a pencil memorandum across the face of it—notified a certain date?

A. It was our usual custom when we sent out notices to note that fact. This is the usual memorandum.

Q. At that time what, if any, position did you occupy, either under the late corporation of Washington or the District of Columbia?

A. I was register of the late corporation at that time, sir.

Q. You spoke of persons being notified. Was any copy kept of the notices sent out?

A. No copies at all.

Q. The notices were sent out to owners of property?

A. To the owners of the property.

Counsel for defendants here called upon the complainant to produce the notice sent to owner of the property, under date of June

2d, 1870, notifying the owner of the property at that time of the amount of the assessment, when it should be paid, and what would be the result in default of payment, and, in the absence of the production of such notice, the defendants will offer secondary evidence to the contents of the same.

Q. State what the contents of such notices were as they were sent out at that time.

42 A. (Producing paper.) Here is a simpler form than the one usually sent by the collector's office.

Q. What is your best recollection of the contents of such notices at that time?

A. That is about it, sir; a printed form.

Q. Without referring to that, just state what the contents of notices sent out at that time were.

A. Parties were notified that there had been levied or assessed on that property, for work done in front of it or on it, a certain amount of money, whatever the assessment may have been, for which the property was held or obligated, and if such tax was paid within thirty (30) days from date of that notice, then no interest was charged; if not paid then interest would be charged from the date of the notice, and also the ten (10) per cent. interest, and that collection would be proceeded with according to law—that is, by tax sale.

Q. Does the record that you now hold disclose the fact that such a notice was sent that the party was notified, as to square 98?

A. It does.

Objection to stating what the record shows. The record will show for itself.

Witness: I will say that I had served two years in the office or one year in the office, two years in the collector's office, previous service in the register's office, and that was one of my duties. We always performed it, made the notes in the same way; that was our only way of entry showing that this notice had been served.

Q. When did you first become register of the corporation of Washington?

43 A. July 1st, 1869.

Q. And held the position how long?

A. Two years.

Q. Covering what period?

A. Down to July 1st, 1871. I think Mr. Emery was relieved a month in advance of his office. I continued to hold and acted in the same relationship—as register.

Q. Down to what time?

A. To the end of my term.

Q. What time was that?

A. July 1, 1871; two years.

Q. Continuously then from '69 to July 1, 1871?

A. Yes, sir.

Q. Did you know Wm. S. Morse during his lifetime?

A. Very well.

Q. Did he at any time hold any position, so far as you know, under the late corporation of Washington?

A. I knew him as one of the contractors under the late corporation; didn't know him in any official capacity.

Q. Contractors in doing what?

A. One or two of the ward contracts.

Q. Do you know in what section of the city he lived at that time?

A. I do not; I know he was living in the fourth (4th) ward.

Q. Were you in the habit of seeing him seldom or frequently?

A. Very frequently. He was intimate with Mr. Bowen.

Q. What was Mr. Bowen at that time?

A. Mayor of the city a portion of the time.

44 Q. Where were you in the habit of seeing him?

A. At the mayor's office and in our office.

Q. In the register's?

A. He was daily in our office, or almost daily.

Q. Was that or not during the time you were register?

A. While I was register.

Q. Now, in connection with the assessment against square in controversy, did you ever have any conversation with Mr. Morse?

Witness: Relative to that assessment?

Mr. Forrest: Relative to that assessment.

A. I have heard him discuss——

Objected to.

A. (Continuing:) Major Doughty, who was assistant register with me, was also connected with Major Morse and in association, to what extent I know not. I know that he advanced moneys to him.

Q. Of your personal knowledge?

A. Of my personal knowledge. There was a man named John Frawley who came to Major Doughty in my office about it. He was foreman for Major Morse, sent around there getting moneys from him, and I know that a portion of this property—this square in question—was turned over by Major Morse to Major Doughty in satisfaction of moneys advanced by Doughty to him.

Q. Do you know for what purpose such moneys were advanced?

A. I think Major Morse borrowed it to carry on his contracts.

Q. Coming down to this particular assessment and whatever work was done in front of this particular square, did you have any conversation?

45 A. There were conversations relative to this assessment in connection with this claim of Doughty.

Q. State as near as you can the substance of any conversation you may have had.

A. Merely as to the amount and the probability of deduction or possibility of reduction, and so on; of being relieved by the board of a portion of this assessment from time to time that was talked of, and Doughty was pushing Morse to settle it so as to relieve the portion that he had taken of its liability.

Q. When was that assessment?

A. June 2d, 1870.

Counsel here offered in evidence the record showing the assessment on the books of the late corporation of Washington, being the record from which the witness has read and testified—that is, so much of the record as has reference to this particular assessment.

Q. In your statement of conversations had with Mr. Morse you spoke about his saying something about getting relief from the board; what board did you have reference to?
A. The board of aldermen and board of common council.
Q. Look at the paving stock now shown you and state whether or not you have ever seen that before.
A. Yes, sir.
Q. On that stock appears the signature of M. G. Emery on each one of them. Do you know M. G. Emery's signature?
A. I do.
Q. Is that his signature?
A. That is his signature.
46 Q. Also on that is the name of John F. Cook, register. Is that your signature?
A. I recognize that as mine.

By Mr. SAVILLE:

Q. Mr. Cook, having seen these certificates, will you please state what they represent, what they were for, how they came to be issued?
A. It was one of the duties of the register at the end of 30 days—the contractor took whatever moneys were paid in cash by a warrant, and for the unpaid amounts we had to issue this scrip, as we called it. This represented unpaid assessments or the amount of unpaid assessments of August 19, 1869. This represented the several instalments of the same—represented this assessment on this record.
Q. They were issued in four instalments?
A. Four instalments, as provided by law.

Counsel here offered in evidence copies of the four certificates of paving stock, to be marked Exhibits J. F. C. Nos. 1, 2, 3, 4; to which there was no objection.

Q. Mr. Cook, I show you a receipt attached to answer of defendant, Mr. Thumbert, to bill in this case, being a revised bill for special assessment. Please examine that paper and state if it is certified as a correct paper by you.
A. It is a duplicate receipt of payment made.
Q. Furnished by you?
A. Yes, sir; my receipt.
Q. Was the money received by you?
A. The money was received. I received the moneys. They were drawbacks.
47 Q. In drawbacks?
A. Yes, sir; Congress made them a legal tender.

Q. Paid in drawbacks for that?

A. Yes, sir.

Q. Look at this and say who paid this.

A. Mr. Dickson. The date referred to by me in previous testimony, I would like to say, is not when the work was done that this assessment was based on, but when it become of entry on my book—when it was assessed at the office. That receipt is for special improvements.

Cross-examined by Mr. MERRIMAN:

Q. This bill was made out by you?

A. No, sir; made out by Major Roome, who preceded me on the stand.

Q. Made out by the office?

A. Yes, sir.

Q. From the records of the office in his division of the office?

A. Yes, sir.

Mr. SAVILLE:

Q. And it represents the subsequent assessment for special improvements?

A. Subsequent work; different work altogether. This assessment was done by the late corporation of Washington. That was done by the District of Columbia as such or the Board of Public Works.

Mr. MERRIMAN:

Q. The assessment you have been testifying about is of
48 June 2d, 1870?

A. The record on my book is June 2d, 1870.

Q. When was it that you had this conversation with Mr. Morse about this assessment?

A. Well, the major was, as I said, almost daily in the office. He and Major Doughty had frequent conversations, and the space that we occupied was about as large as the judge's (Bundy's) library room or private room.

Q. Did he complain that the assessment was excessive?

A. He thought it was heavy. I can't say he thought it was heavy. He thought he could get relieved of it.

Q. Thought it was too much?

A. Yes, sir; and I judged from that that he expected to exchange the scrip with the contractor who did other work. That was about his statement. He expected to exchange the scrip with the contractor who did other work. They buy them up at reduced rates.

Objected to.

Q. You say that these notices sent out to the owners were never returned?

A. I did not say that, sir.

Q. What did you say?

A. I said they were sent out. I——

Q. (Interrupting.) There were no returns made by the officer serving the notice?

A. Some of them were sent by mail. Where a person's identity was well assured sometimes they were sent by mail.

Q. So that there is no evidence on file in the office whether they were served or not?

49 A. They are personally served or served through the mail.

Q. I say there is no evidence on the files in the office of the fact of the notices reaching the owners?

A. Well, they were sent by mail; they would be returned if they did not reach, always. We send a notice to you by mail, and — it fails to reach you it comes back to us.

Q. Was this notice sent by mail?

A. I couldn't say. I didn't send it.

Q. You haven't answered my question. Is there any file in your office showing whether this notice ever reached Mr. Bender, the supposed owner of this property?

A. No, sir; there is nothing.

JOHN F. COOK, *Col. D. C.*

MATTHEW J. LAUGHLIN sworn, and testified as follows:

By MR. SAVILLE:

Q. Please state your name in full, your residence and occupation.

A. My name is Matthew J. Laughlin; I belong in Fairfax, Virginia, now; my occupation is contractor; have been for 15 or 18 years.

Q. What were you engaged in — 1869 and 1870?

A. Contracting.

Q. Were you acquainted with Messrs. Stewart and Joyce, contractors, in 1869–'70?

A. Yes, sir.

Q. Were they or were they not contractors for work in any part of the city of Washington?

50 A. They were contractors in the first ward; what is known as regular first-ward contractors.

Q. They were regular contractors?

A. They were regular contractors for the whole ward, given out for term of 12 months. Mr. Stewart was a paver; the other man was general contractor.

Q. What ward was square 98 in?

A. First ward.

Q. Were you connected with them or acquainted with the work they did?

A. Yes, sir; I was acquainted with the work they did. I superintended that work—21st street, I suppose you speak about—on 21st street from Pennsylvania avenue to N street. I was there every day.

Q. You superintended that work?

A. Yes, sir.

Q. Do you recollect what the work was?

A. The work was laying the foot pavement on both sides of the street; on both sides of 21st street from Pa. Ave. to N street.

Q. And curbing?

A. Well, gutters and all necessary curbing put down.

Q. Now, if you know, please state what was the character of this work.

A. It was well done. I was present when it was inspected by the two assistant commissioners and the ward commissioner. It was perfectly satisfactory to all parties. It was inspected all along the line from Penna. Ave. up to N street.

Q. And you were present?

51 A. I was present.

Q. Do you recollect now who the commissioners were?

A. Well, I can't recollect who they were; the record will show who they were.

Q. If you had the record for reference would you be able to identify them?

A. I know them by eye-sight, but can't think of their names now—been so long ago. I had no business with them except on that street.

Q. Would the record refresh your recollection? There is a transcript of the record of assessment as kept in the office. It is an exhibit in this case. Please look at it and say if these are the names of the persons who were commissioners and assistant commissioners.

A. Yes, sir.

Q. Please state who the commissioner and assistant commissioner were.

A. Henry Himber was the ward commissioner.

Q. Who were the other assistant commissioners?

A. James Fabin and Charles King.

Q. They were all there and inspected the work?

A. They were there and tapped the work all along. I was present when it was done. They had to tap the work in order to test how much material was used. That is the way I recollect.

Q. Who was surveyor or superintendent of streets?

A. Charles H. Bliss was superintendent of streets at that time.

Q. Who was the mayor?

52 A. Sayles J. Bowen, when the work was done. I am speaking about the work that was done in 1869.

Q. Was that square inclosed or improved in any way—square 98?

A. That little flat-iron square? Not to my knowledge. My recollection is that it was commons then.

Q. Did you know Major Morse?

A. Yes, indeed, I did, and I have seen the major in there speaking to Mr. Cook. I used to see him there daily every day I used to have business at Cook's office.

Q. Mr. Laughlin, I now offer you four exhibits, marked J. F. C. Nos. 1, 2, 3, and 4. Please look at them and state what they were and what you know about them.

A. This is issued paving stock for the sidewalks, setting the curb, paving the footway in front square 98, assessed to George Bender.

Q. And issued to whom?

A. Issued to me, M. J. Laughlin.

Q. In what capacity?

A. As assignee from Messrs. Stewart and Joyce.

Q. State how they came to be issued to you.

A. Messrs. Stewart and Joyce assigned it over to me for money advanced on the contract to them.

Q. Look at the back of the certificates and state if that is your signature there.

A. That is my signature.

Q. What did you do with those certificates?

A. I sold those certificates for value.

Q. To whom, if you recollect?

53 A. I think I sold them to Mr. Dick. I am not positive about that.

M. J. LAUGHLIN.

WILLIAM H. THUMBERT, one of the defendants, duly sworn, testified as follows:

By Mr. SAVILLE:

Q. Please state your name, residence, and occupation.

A. William H. Thumbert; 446 M street northwest; I am a clerk in the Government employ in the Post Office Department.

Q. Look at these papers now shown you Exhibits J. F. Cook Nos. 1, 2, 3, and 4, and please state what they are, and what, if any, interest you have in them and how you came by that interest.

A. As has been stated, these are issues of paving stock. I purchased them for value, and I own them.

Q. From whom did you purchase them?

A. Mr. John W. Dick.

Q. You are at the present moment owner of those certificates?

A. I am, sir.

WM. H. THUMBERT.

May 10, 1886.

Def'ts filed copies of specification and contract for improvements — Thomas Joyce and Isaiah Stewart with the District, with written stipulation of counsel that the same may be read in evidence at the hearing in court.

C. S. BUNDY, *Examiner.*

54 (EXHIBIT J. F. C. No. 1.)

City of Washington Paving Stock.

$197.58. No. 1849.

CITY OF WASHINGTON,
MAYOR'S OFFICE, *Oct.* 14*th*, 1870.

Be it known that there is due from the mayor, board of alderman, and board of common council of the city of Washington to M. J. Laughlin, ass'n., or his assigns, the sum of one hundred & ninety-seven $\frac{58}{100}$ dollars, being the amount due on the first installment, bearing interest from the 2nd day of June, eighteen hundred and 70, at the rate of ten per centum per annum, being stock issued in pursuance of an act of the board of alderman and board of common council of the said city, passed on the twenty-eighth day of October, 1867, entitled "An act concerning paved footways," for setting the curbstone and paving the footway in front of square 98; all assessed to Geo. Bender.

The principal and interest of which is to be paid out of the special tax fund, agreeably to the terms of the above-recited act.

M. G. EMERY, *Mayor.*
JOHN F. COOK, *Register.*

---

55 (EXHIBIT J. F. C. No. 2.)

City of Washington Paving Stock.

$197.55. No. 24.

CITY OF WASHINGTON,
MAYOR'S OFFICE, *Oct.* 14*th*, 1870.

Be it known that there is due from the mayor, board of aldermen, and board of common council of the city of Washington to M. J. Laughlin, assn., or his assigns, the sum of one hundred & ninety-seven $\frac{55}{100}$ dollars, being the amount due on the second installment, bearing interest from the 2nd day of June, eighteen hundred and 70, at the rate of ten per centum per annum, being stock issued in pursuance of an act of the board of aldermen and board of common council of the said city, passed on the twenty-eighth day of October, 1867, entitled "An act concerning paved footways," for setting the curbstone and paving the footways in front of square 98; all assessed to Geo. Bender.

The principal and interest of which is to be paid out of the special tax fund, agreeably to the terms of the above-recited act.

M. G. EMERY, *Mayor.*
JOHN F. COOK, *Register.*

56 (EXHIBIT J. F. C. No. 3.)

City of Washington Paving Stock.

$197.55. No. 24.

CITY OF WASHINGTON,
MAYOR'S OFFICE, *Oct. 14th*, 1870.

Be it known that there is due from the mayor, board of aldermen, and board of common council of the city of Washington to M. J. Laughlin, ass'n., or his assigns, the sum of —— dollars, being the amount due on the third installment, bearing interest from the 2nd day of June, eighteen hundred and 70, at the rate of ten per centum per annum, being stock issued in pursuance of an act of the board of aldermen and board of common council of the said city, passed on the twenty-eighth day of October, 1867, entitled "An act concerning paved footways," for setting the curbstone and paving the footways in front of square 98; all assessed to Geo. Bender.

The principal and interest of which is to be paid out of the special tax fund, agreeably to the terms of the above-recited act.

M. G. EMERY, *Mayor.*
JOHN F. COOK, *Register.*

57 (EXHIBIT J. F. C. No. 4.)

City of Washington Paving Stock.

$197.55. No. 24.

CITY OF WASHINGTON,
MAYOR'S OFFICE, *Oct. 14th*, 1870.

Be it known that there is due from the mayor, board of aldermen, and board of common council of the city of Washington to M. J. Laughlin, ass'n., or his assigns, the sum of one hundred & ninety-seven $\frac{55}{100}$ dollars, being the amount due on the fourth installment, bearing interest from the 2nd day of June, eighteen hundred and 70, at the rate of ten per centum per annum, being stock issued in pursuance of an act of the board of aldermen and board of common council of the said city, passed on the twenty-eighth day of October, 1867, entitled "An act concerning paved footways," for setting the curbstone and paving the footways in front of square 98; all assessed to Geo. Bender.

The principal and interest of which is to be paid out of the special tax fund, agreeably to the terms of the above-recited act.

M. G. EMERY, *Mayor.*
JOHN F. COOK, *Register.*

58 DISTRICT OF COLUMBIA, *ss:*

I, Charles S. Bundy, an examiner of the supreme court of the District of Columbia, do hereby certify that the depositions hereto attached were taken down by Grant Richards, a stenographer, and reduced to writing, in the presence of and from the oral statements of the several witnesses in answer to the interrogatories and cross-interrogatories hereto attached, at the times stated, at my office No. 456 La. avenue, Washington, D. C., and after the same had been reduced to writing and then and there read over to the witnesses *was* then subscribed in my presence, each witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein; that the fee for taking said depositions, to wit, $10 on the part of the plaintiff and $14.20 on the part of the defendants, has been paid to me by the parties, respectively, and that the same is just and reasonable.

May 9th, 1886.

CHARLES S. BUNDY, *Examiner.*

59 MAY 10, 1886.

This stipulation and accompanying papers attached were filed as part of the testimony in this case this day.

C. S. BUNDY, *Examiner.*

In the Supreme Court of the District of Columbia. In Eq.

BREWER *v.* THE DISTRICT OF COLUMBIA *et al.*

It is hereby stipulated and agreed between counsel for the respective parties hereto that a copy of the advertisement of January 4, 1869, for proposals for paving, curbing, &c., for year commencing April 1st, 1869, for several wards of city of Washington, and a copy of the contract with Stewart and Joyce and the late corporation of Washington for doing the work of paving, &c., in front of property described in plaintiff's bill of complaint, may be filed and read in evidence at the hearing hereof with the same force and effect as the originals thereof, if duly proved, copies of same being hereto annexed and made a part hereof.

It is further stipulated and agreed that all ordinances of the corporation of Washington and acts of the late Legislative Assembly of the District of Columbia which have any reference to the subject-matter of this *such* may be considered and read in evidence by either party hereto with the same force and effect as if the same had been duly proven.

—— ——,
Att'y for Plaintiff.
H. E. DAVIS,
Sol't. for Dist. of Col.
J. H. SAVILLE,
Sol. for Def't Thumbert.
A. L. MERRIMAN,
Sol. for Comp't.

60 OFFICE OF SUPERINTENDENT AND INSPECTOR OF
SEWERS, CARRIAGE-WAYS, AND FOOTWAYS,
CITY HALL, WASHINGTON, D. C., *Jan.* 4, 1869.

Sealed proposals will be received at the mayor's office until 12 o'clock m. on Thursday, the 14th instant, for paving, curbing, &c., for the year commencing April 1, 1869, for the several wards of the city. No contractor to have nor be interested in more than one ward.

Specifications can be seen at this office; also at the office of the commissioner of improvements, in the basement of the west wing of the city hall.

No bid will be received which does not include an offer for each separate item of work and material.

The law requires that contractors for the above shall be practical pavers.

Each bid must be accompanied with the written guarantee of a responsible party (known to be such) that, if accepted, the bidder will execute a contract in due form and perform the work in accordance therewith.

The guarantee must be, in substance, as follows: "I, A B, guarantee that if this bid be accepted by the mayor that the bidder will enter into contract for the same and perform the work according to the requirements thereof. (Signed) A B."

All assessments for the above work to be made in accordance with existing laws.

P. H. DONEGAN,
Sup't and Insp'r of Streets, Sewers, &c.

Jr. 5, 9t.

61 *Specifications for Grading, Trimming, etc., for* 1869.

No bid will be received which does not include an offer for each separate item of work and material.

By law the mayor is prohibited from awarding contracts for the above work to any person or persons who are not practical pavers.

The right to reject any or all bids is reserved to mayor.

The curbstone to be the best New York North River stone or granite, in pieces of not less than three feet in length and not less than twenty inches wide or deep; not less than five inches thick; the stop surface and a distance down on each side of nine inches to be well dressed and closely jointed together and to be of uniform thickness.

The brick to be of the best quality hand-made, hard red paving brick, to be laid on a bed of sharp river sand, spread four inches deep on a bed of fine clean gravel, free from loan or clay, three inches deep, with two courses on the edge next to the curb and one course on edge on the inner line where the pavement is less than full width; no extra measurement for bricks on edge will be allowed.

The stone pavement to be of common quartz, not exceeding four inches in diameter, except the stone on the outside line of the gutters, which must be of six inches in diameter, laid on a bed of coarse sand and clean gravel, free from clay or loam, at least nine inches deep, and to be twice well rammed the second time after being wet, and after being examined (and not before) by the commissioner to be covered with fine clean gravel or coarse sand and the interstices between the stones well filled with the same material.

62 The flagging to be of the best quality New York flagging, *to be of the best quality of New York flagging,* in pieces not less than three feet in length by sixteen inches wide and not less than six inches thick, the top surface and edges to be well and evenly dressed and ends closely jointed together, to be laid on a bed of sharp sand and coarse gravel, of not less than nine inches thick, in equal proportion; all grading not exceeding six inches to be rated as trimming.

The work to be done in the best manner and to the satisfaction of the mayor and to be commenced within ten days after the contractor receives the written order of the mayor and to be completed within the time named in the order directing it to done, and fifteen per cent. of the amount due the contractor to be withheld until such time as the mayor, the inspector of streets, and the ward commissioner are satisfied that the work will stand twelve months after its completion; and upon the failure of the contractor or contractors to commence the work or to complete it within the time named or upon his or their failure to execute the work of the materials and in the manner herein required the mayor to have right of employing other persons to do the same upon such terms as he may deem expedient; in which event the contractor or contractors so failing shall pay any loss or damage the corporation may sustain in consequence thereof and the contract may be annulled by the mayor.

Any repairs or relaying which may be required before the expiration of the time *of the time* for which the work is warranted to stand to be done by the contractor free of charge within five days
63 after notice from commissioner of improvements of the ward, and upon failure of any contractor or contractors to make any repairs or relay any pavement within five days after notice aforesaid the mayor is to have the right of employing any other person or persons to do the same on such terms as he may deem expedient; in which event the contractor or contractors so failing shall pay any loss or damage the corporation may sustain in consequence thereof. For the due performance of the work and furnishing of the materials as herein required bond and security to the amount of two thousand dollars will be required of the contractors.

A.

And it is to be distinctly understood that all old materials, such as curbstones and bricks, will be delivered to the property-owners.

The bidders will state the rates at which the curbing, paving, and flagging will be executed, including materials.

For setting new curb of N. Y. North River curbstone, per running foot, 87 cents per running foot.

For setting new curb of granite, per running foot, $1.25 per running foot.

For laying new brick pavement, per square yard, 87 cts. per square yard.

For laying new stone pavement, per square yard, 65 cts. per square yard.

For grading (whether excavating or filling), per cubic yard, 22 cents per cubic yard.

64 For trimming, per running foot, 1 ct. per running foot.

For spout gutter, per foot, 1 ct. per foot.

For laying down New York flagging, per square foot, 55 cents per square foot.

For laying New York flagging, sixteen inches wide, not lees than six inches thick, and in pieces not less than three feet long, the top surface to be well dressed and the ends closely joined together in all gutters and alleys, per all gutters, running foot, 55 cts. per running foot.

For laying New York flagging, twelve inches wide, not less than four inches thick, and in pieces not less than three feet long, the top surface to be well dressed and the ends closely joined together in all gutters along the curbstones, per running foot, 38 cts. per running foot.

At the rates at which the following work, exclusive of materials, except the gravel and sand, which may be required :

For setting new curb, including dressing, per running foot, 1 ct. per running foot.

For laying new brick pavement, per square yard, 1 ct. per square yard.

For taking up and relaying old brick pavements, per square yard, 1 ct. per sq. yard.

For taking up and resetting old curb, per running foot, 1 ct. per running foot.

For taking up and relaying old stone pavements, per square yard, 1 ct. per square yard.

For taking up and relaying old flag footways, per square foot, 1 — per square foot.

65 For taking up and relaying flag in gutters, per square foot, 1 ct. per square foot.

All assessments for the above work to be made in accordance with the act approved October 28, 1867, entitled, "An act to change the manner of collecting special taxes."

The undersigned, a practical paver, agrees to execute the work in the District for the above-named prices.

Contract and Specifications of Carriage-ways and Footways in the First Ward.

Know all men by these presents that we, Isaiah Stewart, Thomas Joyce, William Fletcher, and Hugh Murray, are firmly bound, jointly and severally, unto the mayor, board of aldermen, and board of common council of the city of Washington, D. C., in the penal sum of two thousand dollars ($2,000), to be paid the said mayor, board of aldermen, and board of common council, their certain attorney or successors in office; for which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this first day of April, eighteen hundred and sixty-nine.

Whereas the said Isaiah Stewart and Thomas Joyce have entered into contract with the mayor, board of aldermen, and board of common council of the city of Washington, acting by Sayles J. Bowen, mayor of said city, for grading, trimming, curbing, and laying the brick and flag footways and paving the gutters and alleys in the first ward, forming the first district of said city, commencing the first day of April, eighteen hundred and sixty-nine, and is hereunto annexed:

66 Now, the condition of the above obligation is such that if the above-bounden Isaiah Stewart and Thomas Joyce shall faithfully and in all respects execute and perform said contract, then this obligation to be void; otherwise to remain in full force and effect.

ISAIAH STEWART. [SEAL.]
his
THOMAS x JOYCE. [SEAL.]
mark.
WM. FLETCHER. [SEAL.]
H. MURRAY. [SEAL.]

Signed in presence of—
W. B. KING.
F. A. BARNETT.

67 Memorandum of agreement, made and entered into this first of April, eighteen hundred and sixty-nine, by and between Isaiah Stewart and Thomas Joyce, of the first part, and the mayor, board of aldermen, and board of common council of the city of Washington, D. C., acting by Sayles J. Bowen, mayor of said city, of the second part—that is to say:

That said party of the first part hereby contract and agree with the said corporation to furnish the material and to execute the grading, trimming, curbing, and laying the brick and flag footways and paving the gutters and alleys in the first ward, forming the first district in said city, for the year commencing the first day of April, eighteen hundred and sixty-nine, at and for the prices set forth respectively in the schedule marked A and annexed hereto, and subject to all the terms and conditions and including all particulars of work and materials and every other duty and requirement in the premises set forth and expressed in the printed copy of the advertisement inviting proposals, dated the fourth day of January, eighteen hundred and sixty-nine, and published in the Chronicle, National Republican, and Evening Star, newspapers in Washington, D. C.; and in consideration of the premises the said corporation hereby agrees to pay the price aforesaid for the work and materials when the same shall be fully and faithfully done, provided, and executed; and it is to be distinctly understood that all old materials, such as old curb and paving brick, is to be at the disposal of the owner.

ISAIAH STEWART. [SEAL.]
his
THOMAS x JOYCE. [SEAL.]
mark.
S. J. BOWEN, *Mayor*. [SEAL.]

Signed in presence of—
W. B. LONG.
F. A. BOWELL.

68 *Additional Covenant.*

And the said Isaiah Stewart and Thomas Joyce, for themselves, their heirs, executors, and administrators, hereby further covenant that they will at all times and from time to time keep the said work and every part thereof well and sufficiently so guarded and protected that no accident shall happen by reason of any negligence therein to any person or vehicle passing along or crossing the said street wherein the said work is being done, and if at any time during the progress of said work and before the completion of the same, by reason of the negligence of the said Isaiah Stewart and Thomas Joyce or any person or persons employed by *him*, any accidental injury shall happen to any person or persons, animal or animals, vehicle or vehicles, whereby any action for damages shall arise or accrue to any person or persons against the said corporation, they, the said Isaiah Stewart and Thomas Joyce, their heirs, executors, and administrators, shall and will from time to time as the said case shall arise well and truly indemnify and save harmless the said corporation from all loss, cost, and damage by reason thereof and by reason of every such accident.

[SEAL.] ISAIAH STEWART.
his
[SEAL.] THOMAS x JOYCE.
mark.

Signed in presence of—
W. B. LONG.
F. A. BOWELL.

(Indorsed:) Eq. No. 9513. Brewer *v*. District of Col. Filed in evidence May 10th, 1886. C. S. Bundy, examiner in chancery. Thomas Joyce, Isaiah Stewart. April, 1869. 1st ward. Specifications and contract for improvements.

e
e
e
d

(Cop

“EXHIBIT ROOM

Assessment of the Cost of Paving, Grading, Curbing, Guttering, &c., in Front of Sundry Pr

To whom assessed.	No. of square.	No. of lot.	Paving.			Grading.			Curbing.			Cobble-stones, yards.	Per yard.
			Square yards.	Paving, per yd.	Amount.	Cubic yd.	Grading, per yard.	Amount.	Running feet.	Curbing, per foot.	Amount.		
* * * * *	97	*											
	“	*											
	“	*											
	“	*											
	“	*											
George Bender ---- ----	98	all	223	.87	194 01	937	.22	206 14	262½	.87	228 38	90⅓	.65
Holmead grave yard ---	109	all	373	“	328 86	2,439	“	536 58	414	“	360 18	141	“

Approved May 26th, 1870.
(S'g'd) S. J. BOWEN,
Mayor.

(Indorsed:) 951 3., ex. Doc. 25. Brewer *v.* Dist. Col. Exhibit to depositions. “Roome C.” C. S. B. Filed May 11, 1886. R. J. Meigs, clerk.

Entered June 2nd, 18

WASHINGTON

This is to certify tha
above assessments of squ
13th day of Aug., 1870,
to M. J. Laughlin.
(S'g'd) STEWAR

Witness:
WILLIAM MO

(Copy.)

" ROOME C." C. S. B.

ndry Property in the First Ward of the City of Washington, as per Certificate Herewith Annexed.

	Gutters.															
yards.	Per yard.	Amount.	Gutter stones, running feet.	Per foot.	Amount.	First installment.	Paid.	Second installment.	Paid.	Third installment.	Paid.	Fourth installment.	Paid.	Total am't.	Date of law.	Contractor or parties doing work.
																Stewart and Joyce.
⅓	.65	58 72	2 71	.38	102 98									790 23		
1	"	91 65	4 22	"	160 36									1,477 63		

Stock issued Oct. 14, 1870:
1st inst., 1849.
2nd " 2411.
3rd " 2452.
4th " 2480.
(S'g'd) JOHN E. CLARK.

ne 2nd, 1870.

WM. OSCAR ROOME.

CHAS. H. BLISS,
Surveyor or Sup't of Streets.
HENRY HIMLER,
Commissioner.
JAMES TOBIN,
CHARLES KING,
Ass't Commissioners.

SHINGTON, *Aug.* 13, 1870.

rtify that we transfer the
nts of squares 98 & 109 this
ug., 1870, for value received
hlin.
TEWART AND JOYCE.

IAM MORGAN.

69 (Copy.)

MAYOR'S OFFICE, CITY HALL,
WASHINGTON, D. C., *Sept.* 8, 1869.

To Stewart and Joyce, contractors.

SIRS: You will execute the act of the corporation approved July 24, 1869, entitled "An act to set the curbstones and pave the footways and gutters on the east and west sides of 21st street between Pennsylvania avenue & O street north," the work to be commenced within ten days and completed within twenty days from the date hereof.

(S'g'd) S. J. BOWEN, *Mayor.*

(Written across the face in red ink:) Original delivered to Stewart and Joyce Sept. 8, 1869. (S'g'd) Henry Hunter, comm'r 1st ward. Ass't commissioners, C. W. King, James Tobin.

(Indorsed:) 9513, eq. doc. 25. Brewer *v.* Dist. Col. Wm. Oscar Roome. Exhibit Roome B, C. S. B., to depositions. Filed May 11, 1886. R. J. Meigs, clerk.

Here follows statement marked p. 70.

71 *Square* 98.

1796, November 3rd. On a division made between the U. S. commissioners and the original proprietor of square No. 98 the whole of said square was assigned to Jas. M. Lingan, the original proprietor.

John M. Lingan died intestate.

William B. Randolph *vs.* James M. Lingan's widow and heirs-at-law.

Petition, page 111, for partition of estate of James M. Lingan.

June 10, 1817.—Thos. Corcoran, Sr., John Murdock, Clement Smith, John Ott, and John Hough appointed commissioners to report, &c.

Dec. 4, 1817.—Report of commissioners that estate cannot be divided and recommending sale.

June 17, 1818.—Order directing commissioners or a majority of them to convey to Wm. B. Randolph.

February 11, 1819.—Report of commissioners of sale and reciting conveyance to W. B. Randolph, &c.

Thos. Corcoran, Sr., Jno. C. Murdock, and Clement Smith, commissioners, to William B. Randolph.

Deed dated February 5, 1819; rec. February 11, 1819.

Recites above proceedings, and that grantors are a majority of the commissioners, &c.

Conveys all of square No. 98. A. U., 73.

William B. Randolph to George Bender.	Deed dated March 15, 1819; rec. April 2, 1819. Conveys all of square No. 98. A. U., 235.
72 George Bender's last will and testament.	Dated July 24, 1865; prob. Sept. 5, 1865. Devises all his estate, real, personal, and mixed, to wife, Mary Bender, for life, and after her death to his two daughters, Mary E. Fiske and Lucy Ann Tansil, and to their heirs and assigns forever (share and share alike), free and clear of and from any claim, right, or estate of either of their husbands, and in no manner to be liable for their debts; Mary Bender to be executrix. Wills, 10–34.

Mary Bender died some time in the year 1868 or '69.

Mary E. Fiske, *nee* Bender, with Rob't A. Tansil and wife Lucinda A., *nee* Bender.	Deed of partition; dated Nov. 6, 1869; rec'd June 3, 1870. Parties hereto recite that they hold as tenants in common, and desire that each should hold in severalty. Conveys to Lucinda E. Tansil all of square No. 98.

NOTE.—In this deed, in the party clause and acknowledgment, the name appears Lucinda A. Tansil, in the grant Lucinda E., and is signed and executed as Ann L. Tansil. 602–209.

Rob't Tansil and wife, Lucinda A., to William S. Morse.	Deed dated Dec. 7, 1869; rec. January 5, 1870. Conveys all of square No. 98. 605–174.
William S. Morse and wife to James E. Doughty.	Deed dated June 8, 1872; rec. Sept. 5, 1872. Conveys part of square 98, beginning on N St. 18′ from N. W. cor. said square and running thence E. 18′, S. 80′, W. 18′, N. 80′ to beginning. 696–226.
73 James E. Doughty to Simon D. Newcomb.	Deed dated July 31, 1883; rec. July 16 1884. Conveys part square 98, described as last above. 1093–56.
William S. Morse.	It is stated died intestate in August, 1872, seized of all square 98 except the part conveyed to Doughty; leaving a widow, Laura E., and two children, his only heirs-at-law, to wit, William A. Morse and Nina D. Morse.

No disposition of this square by the widow and heirs of Wm. S. Morse to July 30, 1884, of record.

Tax Title.

1869, 21 June.—All square 98 assessed to Geo. Bender; sold to Wm. O. Dennison. Redeemed July 23, 1869.

1876, 3 January.—All square 98 assessed to W. S. Morse; sold to A. G. Hall. Certificate No. 1680.

District of Columbia to Albert G. Hall.	Deed dated March 29, 1878; rec. May 28, 1878. Conveys all of square No. 98; assessed in name of Wm. S. Morse and sold for taxes due said District. 888–328.
Albert G. Hall and wife to Roxana Lamson.	Deed dated April 9, 1878; rec. May 28, 1878. Conveys all of square No. 98. 888–331.
74 Fred'k Douglass, U. S. —, to John E. Kendall.	Deed dated July 6, 1878; rec. July 16, 1878. This deed recites that square 98 was sold at public sale under and by virtue of a writ of *fi. fa.*, dated June 5, 1878, on a judgment, No. 17986, *vs.* Albert G. Hall, and was purchased by said Jno. E. Kendall. Conveys to grantee all of said Hall's interest in and to said square 98. 890–347.
Roxana Lamson to Christopher Thom.	Deed dated Nov. 25, 1879; rec. November 28, 1879. Conveys all of square No. 98. 931–98.
John E. Kendall and wife to Christopher N. Thom.	Deed dated Nov. 26, 1879; rec. Nov. 28, 1879. Conveys all of square No. 98. 231–99.
Simon D. Newcomb and wife to William D. Taber.	Deed dated July 28, 1884; rec. August 5, 1884. Conveys part of square 98, "beginning 36′ E. from N. W. corner of said square, thence running S. 80′, W. 18′, N. 80′ to beginning," subject to all liens, taxes, &c., &c. 1094–175.
William D. Taber to Thos. G. McElvare.	Deed dated July 29, 1884; rec. Sept. 18, 1884. Conveys part of square 98 (described as last above, 1094–175), subject to all liens, taxes, &c., &c. Acknowledgment defective; cured by deed recorded Sept. 29th, 1884, below.
75 Laura E. Morse, widow, Wm. A. & Nina D. Morse (widow and heirs-at-law of Wm. S. Morse), to Thomas G. McElvare.	Deed dated Aug. 6th, 1884; rec. Aug 9, 1884. Conveys all their interest as widow and heirs-at-law of Wm. S. Morse, dec'd, in and to square No. 98. 1095–174.

Thomas G. McElvare to Benj. F. Leighton & Rich'd E. Pairo.	Trust dated Aug. 6, 1884; rec., Aug. 9, 1884. Conveys all grantor's interest in square 98 to secure Laura E. Morse $1,000; 1 note, even date, 6 months' int., 6 per centum, being for part of purchase-money. 1095-176.
Thomas G. McElvare to John H. Brewer.	Deed dated Aug. 13, 1884; rec. Sept. 18, 1884. Conveys all of square No. 98, subject to the trust of $1,000, taxes, liens, tax sales, &c., &c.
Christopher N. Thom and wife to John Hart Brewer.	Quitclaim dated Sept. 25, 1884; rec. Sept. 29, 1884. Conveys all interest in and to square 98.
Wm. D. Taber to John H. Brewer.	Deed dated Sept. 23, 1884; rec. Sept. 29, 1884. Conveys all square No. 98. This recites it was made to correct defect in the acknowledgment of the deed from Taber to McElvare, dated July 29, 1884.

From above examination of title it will be seen that in the deed
recorded in Liber 602-209 the name of Lucinda A. Tansil is given
in various ways, and is executed as Ann L. Tansil. Notwith-
76 standing these variations, I consider that deed sufficient to
vest a good title in Lucinda A. Tansil, as was intended.

There is a judgment, No. 14317, against Jas. E. Dexter and Laura E. Morse, as administrators of Wm. S. Morse, dec'd, of the assets that shall come into their hands in that capacity. As no proceedings have been taken to enforce same by a suit in equity, it is not a lien against the realty, and consequently does not affect square 98. I consider the square No. 98, by the record, good in John Hart Brewer, subject to the above deed of trust to Leighton and Pairo to secure $1,000 and such taxes as are due and unpaid.

Taxes not examined.

Sept. 29th, 1884.

NATH'L CARUSI.

Endorsed: A. W. L. B., 9513. Brewer *vs.* Dist. Col. Filed May 11, 1886. R. J. Meigs, clerk.

77

Book 13, page 390.

George Bender to District of Columbia, Dr.

To all installment of tax for paving footway	$790 23
To interest, at 10 per cent., from June 2, '70, to June 2, '86	1,264 37
To advertising, 1884, square 98, lot —, all	20
	2,054 80

Received payment.

— —,
Collector,
By G.

Auditor's Coupon.

Book 13, page 390.

George Bender to District of Columbia, Dr.

To all installment of tax for paving footways	$790 23
To int., at 10 per ct., from June 2, '70, to June 2, '86	1,264 37
Advertising square 98, lot —, all	20
Total	2,054 80

G.

Correct.
Nov. 9, '85.

WILLIAM MORGAN,
Ass't Assessor.

78

1878 and prior years.
Folio 226.

DISTRICT OF COLUMBIA,
June 2d, 1886.

— lot, all, square 98, assessed in name of Wm. S. Morse:

To all tax for year ending June 30, 1873	$21 57
To interest, at ten per cent., from July 1, 1873	27 87
Amount received	$49 44

Received payment.

— —,
Collector of Taxes, D. C.,
By G.

For year 1873.
Auditor's Coupon.
1873 and prior years.
For year 1873.

DISTRICT OF COLUMBIA,
June 2d, 1886.

Lot —, all, square 98 (9), assessed in name of Wm. S. Morse:

To all of tax, 1873	$21 57
To int., at 10 per ct., from July 1, 1873	27 87
Amount received	$49 44

Certificate No. 6543, held by D. C. Correct.
Nov. 9, '95.

WILLIAM MORGAN,
Ass't Assessor.

79 1874.

DISTRICT OF COLUMBIA,
June 2d, 1886.

Items of sale:

To all of tax for year ending June 30, 1874	$41 78
To penalty	4 39
To advertising, 1874	
To auctioneer's fee	
See 1875 bill.	
Amount sold for	$46 17

1874. Tax Book, folio 228, lot —, part square No. 98.

To amount sold for taxes June 29, 1875, assessed in name of Wm. S. Morse	$46 17
Interest, at the rate of 10 per cent. per annum, from day of sale to date of redemption	50 45
Amount required to redeem	$96 62

Received payment.

——— ———,
Collector,
By G.

Auditor's Coupon.

1874.

DISTRICT OF COLUMBIA,
June 2d, 1886.

Items of sale:

To all of tax	$41 78
To penalty	4 39
To advertising	
To auction fee	
See '75 bill.	
Amount sold for	$46 17

1874. Tax Book, folio 228, lot —, part square No. 98.

Am't sold for taxes June 29, '75, assessed in name of Wm. S. Morse	$46 17
Int., at 10 per ct. per annum, from date of sale to date of redemption	50 45
Amount required to redeem	$96 62

G.

Correct. Nov. 9, '85.

WILLIAM MORGAN,
Ass't Assessor.

80 1875.

DISTRICT OF COLUMBIA,
June 2d, 1886.

Items of sale:

To all of tax for year ending June 30, 1875	$62 27
To penalty	5 01
To advertising	21 42
To auctioneer's fee	05
Amount sold for	$89 15

1875. Tax Book, folio 244, lot —, part square No. 98.

To amount sold for taxes June 29, 1875, assessed in name of Wm. S. Morse	$89 1
Interest, at the rate of ten per cent. per annum, from day of sale to date of redemption	97 40
Amount required to redeem	$186 55

Received payment.

——— ———,
Collector.
By G.

Auditor's Coupon.

1875.

DISTRICT OF COLUMBIA,
June 2d, 1886.

Items of sale:

To all of tax	$62 67
To penalty	5 01
To advertising	21 42
To auction fee	05
Amount sold for	$89 15

1875. Tax Book, folio 224, lot —, part square No. 98.

Amount sold for taxes June 29, '75, assessed in name of Wm. S. Morse	$89 15
Int., at 10 per ct. p'r annum, from date of sale to date of redemption	97 40
Amount required to redeem	$186 55

G.

Correct. Nov. 9, '85.

WILLIAM MORGAN,
Ass't Assessor.

81 Supreme Court of the District of Columbia.

JOHN H. BREWER
vs.
DISTRICT OF COLUMBIA & —— THUMBERT. } Eq., No. —.

It is hereby stipulated that the sum of $2,400 is a sufficient amount to deposit with the clerk of the court to satisfy the requirements of the decree passed in this cause of date of Oct. 27th, 1885. Copies of tax bill and collector's computations hereto annexed.

Nov. 9, 1885.

JAS. H. SAVILLE,
Solicitor for D'f't Thumbert.
H. E. DAVIS,
Att'y for Dist. Col.

(Indorsed:) Equity, No. 9513. John H. Brewer *vs.* Dist. of Col. *et al.* Stipulation to sufficiency of deposit to meet decree of Oct. 27, '85, & tax bills. Filed Nov. 9, 1885. R. J. Meigs.

82 In the Supreme Court of the District of Columbia.

MONDAY, *October* 4, 1886.

Proceedings before the supreme court of the District of Columbia, sitting in general term, commencing on the first Monday, fourth day, of October, 1886.

Present: Chief Justice Cartter and Justices Cox and Merrick.

* * * * * * *

Adjourned until to-morrow at ten a. m.

(5 *Minutes of the General Term, p.* 445.)

In the Supreme Court of the District ef Columbia.

THURSDAY, *October* 21, 1886.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter and Justices Cox and Merrick.

* * * * * * *

JOHN H. BREWER
vs.
THE DISTRICT OF COLUMBIA *et als.* } 9513, Equity Docket 25.

Argued on behalf of the District by Mr. H. E. Davis and on behalf of the complainant by Mr. Merriman until adjournment, at one p. m.

Adjourned till ten a. m., Friday, October 22, 1886.

In the Supreme Court of the District of Columbia.

FRIDAY, *October* 22, 1886.

Session resumed pursuant to adjournment.

Present: Chief Justice Cartter and Justices Cox and Merrick.

* * * * * * *

83 JOHN H. BREWER *vs.* THE DISTRICT OF COLUMBIA *et al.* } Equity, 9513.

Argued by Mr. Willoughby for complainant and in reply and conclusion by Mr. H. E. Davis and cause submitted.

* * * * * * *

Adjourned until ten a. m. to-morrow.

In the Supreme Court of the District of Columbia. In Equity.

TUESDAY, *November* 2, 1886.

Session resumed pursuant to adjournment. Present: Chief Justice Cartter and Justices Cox and Merrick.

JOHN H. BREWER *vs.* THE DISTRICT OF COLUMBIA *et als.* } No. 9513.

This cause having been certified to this court by the special term sitting in equity, to be heard in the first instance in the general term, and coming on to be heard, and having been argued by counsel and duly considered by the court, it is, this second day of November, A. D. 1886, ordered, adjudged, and decreed that the deed of the District of Columbia to Albert G. Hall, of March 9, 1878, through which complainant claims title, conveyed to him and to his assigns, title in fee simple, to the property described in the bill, *to the property described in the bill*, to wit, square ninety-eight, in the city of Washington, D. C., free from and discharged of all taxes which had been assessed and were in arrear against the same prior to January third, 1876, the date of sale mentioned in said deed, on account of
84 which sale said deed was given, and that the defendants be, and they are hereby, perpetually enjoined from selling or attempting to sell said real estate for the enforcement of the collection of the taxes described in the bill of complaint and assessed prior to the said sale of January 3d, 1876, and that the defendants pay the costs of this suit.

And it further appearing to the court that the sum of twenty-four hundred dollars was deposited by the complainant in the registry of this court, in pursuance of the decree of the court in special term of October 27th, 1885, in lieu of the lien claimed for taxes subject to the disposition of the court upon final decree, it is further ordered that the clerk of this court pay over the said money so deposited; and from this decree the defendants and each of them in open court pray an appeal to the Supreme Court of the United States.

By the court:

D. K. CARTTER,
Chief Justice.

(5 *Minutes of the General Term, p.* 469.)

* * * * * * *

Adjourned till ten a. m., Wednesday, November 3, 1886.

85 In the Supreme Court of the District of Columbia.

MONDAY, *April* 23, 1888.

Proceedings before the supreme court of the District of Columbia, sitting in general term, beginning the fourth Monday, April 23, 1888.

Present: Chief Justice Bingham and Justices Cox and James.

* * * * * * *

Adjourned until to-morrow at ten a. m.

In the Supreme Court of the District of Columbia. In General Term.

FRIDAY, *July* 6, 1888.

Session resumed.

Present: Chief Justice Bingham and Justices Hagner and James.

* * * * * * *

86 In the Supreme Court of the District of Columbia. In General Term.

JOHN H. BREWER, Complainant,
against
THE DISTRICT OF COLUMBIA, M. J., LAUGHLIN and WILLIAM H. THUMBERT, Defendants.
} Equity No. 9513.

Come now the above-named defendants, by their solicitors, and appeal to the Supreme Court of the United States from the decree of the supreme court of the District of Columbia in the above-entitled cause of the second day of November, A. D. 1886.

HENRY E. DAVIS,
JAMES H. SAVILLE,
Solicitors for Defendants.

The above appeal is allowed this 6th day of July, A. D. 1888.

E. F. BINGHAM,
Chief Justice.

(Indorsed:) Eq. No. 9513. Brewer *vs.* Dist. Col. Appeal of def'ts to Sup. C't U. S. 6 minutes of general term, 127. See the decree appealed from. 5 minutes general term, 468, 469. Filed Jul. 6, 1888. R. J. Meigs, clerk.

87 In the Supreme Court of the District of Columbia. In Eq.

JOHN H. BREWER, Complainant,
vs.
THE DISTRICT OF COLUMBIA *et al.*, Defendants.
} No. 9513.

To John H. Brewer:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal prayed by the defendants in a certain cause depending in the supreme court of the District of Columbia and duly allowed, wherein you are complainant and The District of Columbia, M. J. Laughlin, and William H. Thumbert are defendants, to show cause, if any there be, why the decree from which said appeal was allowed should not be set aside and corrected so that speedy justice be done the parties in that behalf.

Witness Edward F. Bingham, chief justice of the said supreme court of the District of Columbia.

E. F. BINGHAM,
Chief Justice.

Test:
[SEAL.]
R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

Service acknowledged July 6th, 1888.

W. WILLOUGHBY,
Solicitor for Complainant.

(Indorsed:) In eq. No. 9513. Brewer *vs.* The District of Columbia *et al.* Citation. Filed Jul. 6, 1888. R. J. Meigs, clerk.

88 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 4th day of October, 1888.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 4th day of Oct'r, 1888.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 4th day of Oct'r, 1888.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

[Endorsed :] Authentication of record.

Endorsed on cover: District of Columbia supreme court. No. 1431. The District of Columbia, M. J. Laughlin, and William H. Thumbert, appellants, *vs.* John H. Brewer. Filed October 31, 1888.

Office Supreme Court U. S.
FILED.
APR 8 1889
JAMES H. MCKENNEY,
CLERK.

IN THE

Supreme Court of the U. S.

OCTOBER TERM 1888.

DISTRICT OF COLUMBIA *et al*
vs.
JOHN H. BREWER.
No. 1431.

MOTION TO DISMISS.

The defendant Brewer, filed his bill in Equity in the Supreme Court of the District of Columbia, against the appellant, to remove an alleged lien, claimed by the District of Columbia against square 98, in the city of Washington for a special tax for paving and curbing, assessed June 2d, 1870, of $790.23 and interest at 10 per cent., also certain general taxes assessed prior to 3d of January, 1876, amounting in all to $89.15 with interest at 10 per cent., upon the ground that on the last named date, the District of Columbia made public sale of said real estate for taxes, upon which sale a deed was executed in 1878 to one Hall, the highest bidder followed by mesne conveyances from Hall to Brewer, the complainant below.

This Bill was filed June 23d, 1885. On 27th of October, 1885, a decree was rendered in said cause, which after reciting the taxes as claimed, directed that when the complainant should have deposited in the Registry of the Court the amount of such taxes and interest, the property should stand relieved from the lien of of said taxes, and the money so deposited should be held in lieu thereof, and subject to the disposition of the court in final decree. (Record page 10.)

In conformity with this decree, the complainant deposited in the Registry of the Court $2,400, which sum the solicitors for the defendants stipulated was sufficient to satisfy the requirements of the decree. (Record page 43.)

Upon final hearing (November 2, 1886,) the court decreed that the said real estate should be free from and discharged of all taxes, which had been assessed and were in arrears against the same prior to January 3d, 1876, the date of the sale mentioned in the deed of the District of Columbia to Albert G. Hall, and perpetually enjoined the said District from attempting to sell said real estate for the enforcement of the collection of said taxes; also, that $2,400 so deposited be returned to the complainant and appeal to the Supreme Court prayed. (Record page 44.) Record filed on appeal October 31, 1888.

The defendant now moves to dismiss said appeal for want of jurisdiction.

This motion is predicated upon the Act of Congress of March 3d, 1885, which is as follows:

"That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in Equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.

"Section 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute." 23 Stat. at Large 443.

Inasmuch as the amount involved does not exceed $2,400, the amount deposited in Court to stand in lieu of the lien claimed, it is clear that the jurisdiction of this Court is not conferred by the first section of the Act.

And it is insisted that the case does not come within any of the exceptions contained in the second section of the Act; it does not involve the validity of any patent or copyright, neither was there drawn in question the validity of any treaty or statute of or an authority exercised under the United States in order to give jurisdiction to this Court under the second section of the Act. The question of *validity* of some act of Congress exercised under the United States must have been raised in the court below and decided by that court.

In Adams vs. Crittenden 106 U. S. 576, which was a suit brought by an assignee in bankruptcy and a purchaser of certain lands sold under an order of a bankrupt court to restrain the defendants from enforcing certain decrees, the court says: "The mere fact that the matter in dispute arises under the Constitution or Laws of the United States, or treaties made, does not give us jurisdiction for the review of the judgments or decrees of the Circuit and District Courts."

No language could more clearly express the proper construction of the act as to the jurisdiction of this court. It is not every act of an agent of the government that comes within the exceptions of the statute.

Besides the officials who conducted the sale were not officers of the United States, but of a corporation, which, it is true had its being from the United States, and were guided in their acts by the United States, laws but neither was the legality of such acts or authority in any manner questioned.

Further, even if the authority of any of the District Columbia officials could have been questioned, no such claim or pretense was set up by the defendant below, the answer of the defendant only averring that it is apparent from the face of the deed, "that it was given solely and exclusively for the purpose of conveying to said Hall the right, title and interest of said District in said propety, if any it had, by reason of the failure of the owner or person in whose name said property was assessed to pay the taxes due this defendant for the fiscal year ending June 30, 1872, and not for any other tax or assessment whatever due it by the owners of said property, or the person to whose name the same was assessed, and especially the special assessments and taxes referred to in said bill." (Rec. 11 and 12.)

Section 709 of the Revised Statutes which is in the exact language of that part of the second section of the act referred to, except the addition of the words "And the decision is against their validity" and the omission of the comma after the word "of" and before "or an authority exercised etc." has been frequently before this court for proper construction.

In Crowell vs. Randall, 10th Peters 368. The Court after reviewing the authorities hold "Two things should have occurred and be apparent in the record, first that some one of the questions stated in the section did arise in the court below; and second, that a decision was actually made thereon by the same court in the manner required by the section. If both of these do not appear on the record the appellate jurisdiction fails. It is not sufficient to show that such a question might have occurred or such a decision might have been made in the court below. It must be demonstrated that they did exist and were made."

The question again came up in Armstrong vs. the Treasurer &c., 16th Peters 281, in which the Court held to the same views.

Later, Brown vs. The State of Colorado, 106 U. S. 95.

Detroit City Railway Co. vs. Guthard, 114 U. S. 133.

In the latter case the Court after reviewing its former decisions repeat "It is what was actually decided that we are to consider not what might have been decided, and as our jurisdiction must appear affirmatively on the face of the record before we can proceed, the record must show either in express terms or by fair implication not only the question but its decision. It is not enough to find by searching after judgment that the requisite question might have been raised and presented for decision, it must appear that it was actually raised and actually decided."

The principles enunciated in these decisions are applicable to the act under consideration except that the nature of the decision made is not material, but as be-